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Written statement* submitted by the Indian Council of South America (CISA), a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Recommendations for EMRIP and UN Plan of Action

The so-called consultation on the United Nations System-wide Action Plan at the 8th session of EMRIP was more an attempt by the representative of the Secretary General to muffle the rights of Indigenous Peoples rather than invoke the universal application of Indigenous rights and place them on the table. Where was the explanation before the consultation by either the Secretariat of EMRIP or by a Special Hand-out by the Facilitator to say that this consultation was a follow-up of the meeting on development in Addis Abba in July? This was an assault on the rights of Indigenous Peoples with an agenda that was narrowed to "achieving the ends of the Declaration on the Rights of Indigenous Peoples". This consultation was based on the High Level Plenary that unilaterally reduced the scope and application of the rights of Indigenous Peoples by a façade of regional representation. The right to self-determination, equal participation and consent were removed from the General Assembly resolution leaving a one way path to State determination on what the scope and application of the Declaration on the Rights of Indigenous Peoples and how Indigenous Rights are to be reduced and omitted at the United Nations.

The Declaration on the Rights of Indigenous Peoples is not the only standard from which Indigenous Peoples can harness their rights. There are Indigenous Peoples recognized under the United Nations decolonization process (Article 73 of the Charter of the United Nations) and are also subjects of international law. The "constructive ambiguity" in the text of the Indigenous Declaration requires that in interpreting or determining what some of the ambiguous phrases mean, Indigenous Peoples are to be treated as equals. The equal right and self-determination and equal participation of all peoples, under Article 1.2 of the Charter of the United Nations must be applied to Indigenous Peoples. The Vienna Convention on the Law of Treaties requires that these principles be treated among equals, not among puppets or collaborators that claim to speak on everyone's behalf.

The issue of puppet governments, puppet institutions, collaborators and/or quislings is part of the international vernacular in international law and relations. This terminology must be part of the equation when considering equal participation and decision-making in meeting such as the High Level Plenary masquerading as a World Conference or at the World Intellectual Property Organization (WIPO) deliberations for an international treaty in Traditional Knowledge (TK), Traditional Cultural Expressions (TCEs) and Genetic Resources (GRs). The Permanent Forum sent a document to WIPO requesting equal participation for Indigenous Peoples. It was ignored not only by WIPO, but by Indigenous collaborators who refused to honour it. Indigenous collaborators are highly funded by States and lead their constituency without an open and transparent process. This is how the weal provisions of the Nagoya Protocol came about. Now, WIPO uses such examples as the Nagoya Protocol in other international venues to diminish the rights of Indigenous Peoples. This applies not only to WIPO and the Nagoya Protocol, but to lands and territories of Indigenous Peoples. International law accepts that when collaborators of puppet institutions make an agreement with a colonizing State or occupying power, the State made an agreement with itself.

The Nagoya Protocol and the WIPO examples are why the GCG cannot claim to represent Indigenous regions. Their manner of placing themselves in manufactured leadership positions are a contradiction of the right to self-determination and many principles such as free, prior and informed consent. The so-called "regional representation" meetings of Indigenous Peoples cannot claim to represent the whole of the regions but only a position from organizations from the regions. This false and misleading representation is causing damage to Indigenous Peoples rights. States will not address it since it is their collaborators manufacturing consent. Take the example of the adoption of the Nagoya Protocol. States are happy that collaborating Indigenous representatives agreed to accept the limitation of national law under their jurisdiction in the implementation of the Nagoya Protocol. Indigenous Peoples objected to this regional representation at the Nagoya Protocol and prior to the High Level Plenary but were denied the proper voice of objection. This violates the "equal right and self-determination" principle under Article 1.2 of the Charter of the United Nations. CISA and other Indigenous Nations and peoples diplomatically protest the application of the Nagoya Protocol and the attempt to undermine our rights. It is necessary to employ a higher standard of consent for states of peoples such

as Indigenous Peoples at international meetings. Thus, those Indigenous organizations cannot claim regional representation or unilaterally reduce the scope and application of the rights of peoples for all Indigenous Peoples. Such collaborators present a sigh of legal and political relief for particular States who impose unilateral and coercive measures to exploit the world's Indigenous Peoples.

The High Level Plenary masquerading as a world conference did not have the attributes of preparatory meetings and Prepcoms between States and Indigenous Peoples to discuss the parameters for such a conference; instead, a particular group of Indigenous groups gave false and misleading information without addressing or issuing caveats about the detrimental effects of allowing a State driven initiative. The lack of free, prior and informed consent or the fully informed consent principle under the United Nations decolonization process has obviously impaired the ability of Indigenous Peoples to determine their own status and to apply equal participation or consent based on their right to self-determination. Without the respect and dignity given to Indigenous Peoples, this simple High Level Plenary of the General Assembly being billed as a World Conference cannot be used to reduce our rights to our territory and resources unilaterally.

This will have an extremely devastating effect on further standard setting for Indigenous Peoples. There are Indigenous Peoples who do not want to use the existing Declaration on the Rights of Indigenous Peoples as a standard for implementing their right to self-determination as they claim their rights as subjects of international law. The final report on Treaties, Agreements and Constructive Arrangements by the late Professor Miguel Alfonso Martinez confirms this. Many Indigenous Peoples refuse to relinquish the existing obligations expressed in international treaties that States have to Indigenous Peoples. Make this clear, we diplomatically protest that this one sided High Level Plenary masquerading as a World Conference and its effect on the existing obligations to Indigenous Peoples.

States cannot simply wipe their hands of their international responsibilities concerning the equal right and self-determination of peoples. One example of gross negligence is the adoption of a resolution in support of the High Level Plenary by the National Congress of American Indians (NCAI). Prior to its adoption it was not discussed openly. The NCAI resolution was presented by a collaborating individual representing an organization without applying the free, prior and informed consent as part of the process. The Tribal Governments were deprived of debating the pro's and con's or the negative consequences for supporting such an initiative.

There are puppet institutions established in Alaska and Hawaii and in the Great Sioux Nation that violate the free political institutions principle under Article 73 of the Charter of the United Nations. CISA, the Indigenous Peoples and Nations Coalition, Koani Foundation and the Great Sioux Nations graciously thank Pakistan for calling upon the United States of America to respond to a call that Alaska, Hawaii and the Dakotas be allowed to go before the United Nations Decolonization Committee to present our cases. Our cases are as states of peoples who are vested with the right to self-determination under international law. Our rights already stand in violation or our originally recognized status. Many of our peoples on the ground are not fully informed of our status, and even if they are, many are afraid of the backlash of the United States of America for promoting our rights.

States are denying Indigenous Peoples their rights as peoples by using unilateral and coercive measures imposed by the High Level Plenary or by the restricted domestic law application that is reduced solely to the Declaration on the Rights of Indigenous Peoples. We assert our rights under the law of nations and international as peoples.

- The mandate of EMRIP needs to be able to address the rights of peoples as peoples under Article 1.2 of the Charter of the United Nations.
- It must be able to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples
- It must be able to give attention to the evolution of international standards concerning indigenous rights.
- It must be able to interact, communicate and send recommendations to other United Nations bodies
- It must be able to initiate its own procedures and studies

- It must be able to address complaints

CISA and the Indigenous Peoples and Nations Coalition therefore asserts our international law rights need to be established before addressing or limiting the mandate of EMRIP solely to the Declaration on the Rights of Indigenous Peoples.